

User Name: Mai Denawa

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Code of Federal Regulations > TITLE 40 -- PROTECTION OF ENVIRONMENT > CHAPTER I -- ENVIRONMENTAL PROTECTION AGENCY > SUBCHAPTER D -- WATER PROGRAMS > PART 144 -- UNDERGROUND INJECTION CONTROL PROGRAM > SUBPART A -- GENERAL PROVISIONS

§ 144.3 Definitions.

Terms not defined in this section have the meaning given by the appropriate Act. When a defined term appears in a definition, the defined term is sometimes placed within quotation marks as an aid to readers.

Administrator means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

Application means the EPA standard national forms for applying for a permit, including any additions, revisions or modifications to the forms; or forms approved by EPA for use in approved States, including any approved modifications or revisions.

Appropriate Act and regulations means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA); or Safe Drinking Water Act (SDWA), whichever is applicable; and applicable regulations promulgated under those statutes.

Approved State Program means a UIC program administered by the State or Indian Tribe that has been approved by EPA according to SDWA sections 1422 and/or 1425.

Aquifer means a geological "formation," group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

Area of review means the area surrounding an injection well described according to the criteria set forth in § 146.06 or in the case of an area permit, the project area plus a circumscribing area the width of which is either 1/4 of a mile or a number calculated according to the criteria set forth in § 146.06.

Cesspool means a "drywell" that receives untreated sanitary waste containing human excreta, and which sometimes has an open bottom and/or perforated sides.

Contaminant means any physical, chemical, biological, or radiological substance or matter in water.

Director means the Regional Administrator, the State director or the Tribal director as the context requires, or an authorized representative. When there is no approved State or Tribal program, and there is an EPA administered program, "Director" means the Regional Administrator. When there is an approved State or Tribal program, "Director" normally means the State or Tribal director. In some circumstances, however, EPA retains the authority to take certain actions even when there is an approved State or Tribal program. In such cases, the term "Director" means the Regional Administrator and not the State or Tribal director.

Draft permit means a document prepared under § 124.6 indicating the Director's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a "permit." A notice of intent to terminate a permit, and a notice of intent to deny a permit, as discussed in § 124.5 are types of "draft permits." A denial of a request for modification, revocation and reissuance, or termination, as discussed in § 124.5 is not a "draft permit."

Drilling mud means a heavy suspension used in drilling an "injection well," introduced down the drill pipe and through the drill bit.

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Drywell means a well, other than an improved sinkhole or subsurface fluid distribution system, completed above the water table so that its bottom and sides are typically dry except when receiving fluids.

Eligible Indian Tribe is a Tribe that meets the statutory requirements established at 42 U.S.C. 300j-11(b)(1).

Emergency permit means a UIC "permit" issued in accordance with § 144.34.

Environmental Protection Agency ("EPA") means the United States Environmental Protection Agency.

EPA means the United States "Environmental Protection Agency."

Exempted aquifer means an "aquifer" or its portion that meets the criteria in the definition of "underground source of drinking water" but which has been exempted according to the procedures in § 144.7.

Existing injection well means an "injection well" other than a "new injection well."

Facility or activity means any UIC "injection well," or an other facility or activity that is subject to regulation under the UIC program.

Fluid means any material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state.

Formation means a body of consolidated or unconsolidated rock characterized by a degree of lithologic homogeneity which is prevailing, but not necessarily, tabular and is mappable on the earth's surface or traceable in the subsurface.

Formation fluid means "fluid" present in a "formation" under natural conditions as opposed to introduced fluids, such as "drilling mud."

Generator means any person, by site location, whose act or process produces hazardous waste identified or listed in 40 CFR part 261.

Geologic sequestration means the long-term containment of a gaseous, liquid, or supercritical carbon dioxide stream in subsurface geologic formations. This term does not apply to carbon dioxide capture or transport.

Ground water means water below the land surface in a zone of saturation.

Hazardous waste means a hazardous waste as defined in 40 CFR 261.3.

Hazardous waste management facility ("HWM facility") means all contiguous land, and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (for example, one or more landfills, surface impoundments, or combination of them).

HWM facility means "Hazardous Waste Management facility"

Improved sinkhole means a naturally occurring karst depression or other natural crevice found in volcanic terrain and other geologic settings which have been modified by man for the purpose of directing and emplacing fluids into the subsurface.

Indian lands means "Indian country" as defined in 18 U.S.C. 1151. That section defines Indian country as:

(a) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation;

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(b)All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and

(c)All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Indian Tribe means any Indian Tribe having a Federally recognized governing body carrying out substantial governmental duties and powers over a defined area.

Injection well means a "well" into which "fluids" are being injected.

Injection zone means a geological "formation" group of formations, or part of a formation receiving fluids through a "well."

Interstate Agency means an agency of two or more States established by or under an agreement or compact approved by the Congress, or any other agency of two or more States or Indian Tribes having substantial powers or duties pertaining to the control of pollution as determined and approved by the Administrator under the "appropriate Act and regulations."

Major facility means any UIC "facility or activity" classified as such by the Regional Administrator, or, in the case of approved State programs, the Regional Administrator in conjunction with the State Director.

Manifest means the shipping document originated and signed by the "generator" which contains the information required by subpart B of 40 CFR part 262.

New injection wells means an "injection well" which began injection after a UIC program for the State applicable to the well is approved or prescribed.

Owner or operator means the owner or operator of any "facility or activity" subject to regulation under the UIC program.

Permit means an authorization, license, or equivalent control document issued by EPA or an approved State to implement the requirements of this part, parts 145, 146 and 124. "Permit" includes an area permit (§ 144.33) and an emergency permit (§ 144.34). Permit does not include UIC authorization by rule (§ 144.21), or any permit which has not yet been the subject of final agency action, such as a "draft permit."

Person means an individual, association, partnership, corporation, municipality, State, Federal, or Tribal agency, or an agency or employee thereof.

Plugging means the act or process of stopping the flow of water, oil or gas into or out of a formation through a borehole or well penetrating that formation.

Point of injection means the last accessible sampling point prior to waste fluids being released into the subsurface environment through a Class V injection well. For example, the point of injection of a Class V septic system might be the distribution box-the last accessible sampling point before the waste fluids drain into the underlying soils. For a dry well, it is likely to be the well bore itself.

Project means a group of wells in a single operation.

Radioactive Waste means any waste which contains radioactive material in concentrations which exceed those listed in 10 CFR part 20, appendix B, table II, column 2.

RCRA means the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 (Pub. L. 94-580, as amended by Pub. L. 95-609, Pub. L. 96-510, 42 U.S.C. 6901 et seq.).

Regional Administrator means the Regional Administrator of the appropriate Regional Office of the Environmental Protection Agency or the authorized representative of the Regional Administrator.

Sanitary waste means liquid or solid wastes originating solely from humans and human activities, such as wastes collected from toilets, showers, wash basins, sinks used for cleaning domestic areas, sinks used for food preparation, clothes washing operations, and sinks or washing machines where food and beverage serving dishes, glasses, and utensils are cleaned. Sources of these wastes may include single or multiple residences, hotels and motels, restaurants, bunkhouses, schools, ranger stations, crew quarters, guard stations, campgrounds, picnic grounds, day-use recreation areas, other commercial facilities, and industrial facilities provided the waste is not mixed with industrial waste.

Schedule of compliance means a schedule of remedial measures included in a "permit," including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the "appropriate Act and regulations."

SDWA means the Safe Drinking Water Act (Pub. L. 93-523, as amended; 42 U.S.C. 300f et seq.).

Septic system means a "well" that is used to emplace sanitary waste below the surface and is typically comprised of a septic tank and subsurface fluid distribution system or disposal system.

Site means the land or water area where any "facility or activity" is physically located or conducted, including adjacent land used in connection with the facility or activity.

State means any of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, or an Indian Tribe treated as a State.

State Director means the chief administrative officer of any State, interstate, or Tribal agency operating an "approved program," or the delegated representative of the State director. If the responsibility is divided among two or more States, interstate, or Tribal agencies, "State Director" means the chief administrative officer of the State, interstate, or Tribal agency authorized to perform the particular procedure or function to which reference is made.

State/EPA agreement means an agreement between the Regional Administrator and the State which coordinates EPA and State activities, responsibilities and programs.

Stratum (plural strata) means a single sedimentary bed or layer, regardless of thickness, that consists of generally the same kind of rock material.

Subsurface fluid distribution system means an assemblage of perforated pipes, drain tiles, or other similar mechanisms intended to distribute fluids below the surface of the ground.

Total dissolved solids means the total dissolved (filterable) solids as determined by use of the method specified in 40 CFR part 136.

Transferee means the owner or operator receiving ownership and/or operational control of the well.

Transferor means the owner or operator transferring ownership and/or operational control of the well.

UIC means the Underground Injection Control program under Part C of the Safe Drinking Water Act, including an "approved State program."

Underground injection means a "well injection."

Underground source of drinking water (USDW) means an aquifer or its portion:

(a)

(1) Which supplies any public water system; or

(2) Which contains a sufficient quantity of ground water to supply a public water system; and

(i) Currently supplies drinking water for human consumption; or

(ii) Contains fewer than 10,000 mg/l total dissolved solids; and

(b) Which is not an exempted aquifer.

USDW means "underground source of drinking water." 

Well means: A bored, drilled, or driven shaft whose depth is greater than the largest surface dimension; or, a dug hole whose depth is greater than the largest surface dimension; or, an improved sinkhole; or, a subsurface fluid distribution system.

Well injection means the subsurface emplacement of fluids through a well.

Statutory Authority

Safe Drinking Water Act, 42 U.S.C. 300f et seq; Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.

History

[48 FR 14189, Apr. 1, 1983, as amended at 49 FR 45305, Nov. 15, 1984; 52 FR 20676, June 2, 1987; 53 FR 37412, Sept. 26, 1988; 58 FR 63895, Dec. 3, 1993; 59 FR 64345, Dec. 14, 1994; 64 FR 68546, 68565, Dec. 7, 1999; 75 FR 77230, 77287, Dec. 10, 2010]

Annotations

Notes

[EFFECTIVE DATE NOTE:

75 FR 77230, 77287, Dec. 10, 2010, amended this section, effective Jan. 10, 2011.]

Case Notes

LexisNexis® Notes

Case Notes Applicable to Entire Part

Environmental Law : Water Quality : Safe Drinking Water Act : Enforcement

Environmental Law : Water Quality : Safe Drinking Water Act : Underground Sources

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Governments : Native Americans : Authority & Jurisdiction
 Governments : Native Americans : Property Rights
 Governments : State & Territorial Governments : Property

Case Notes Applicable to Entire Part

Part Note

Environmental Law : Water Quality : Safe Drinking Water Act : Enforcement

Hydro Res., Inc. v. United States EPA, 562 F.3d 1249, 2009 U.S. App. LEXIS 8517 (10th Cir Apr. 17, 2009).

Overview: EPA conclusion that "Section 8" land located in northwest New Mexico fell within "dependent Indian communities" pursuant to 18 U.S.C.S. § 1151(b), had an adequate basis in law, and thus, the land was "Indian country," and a proposed uranium mine was subject to EPA underground injection control under the Safe Drinking Water Act.

- By statutory default, the U.S. Environmental Protection Agency typically has primary enforcement responsibilities for lands that fall within 40 C.F.R. § 144.3's definition of "Indian lands" until a tribe has secured "Treatment as a State" (TAS) status and primacy over its lands. That regulation, 40 C.F.R. § 144.3, states that "Indian lands" means Indian country as defined in 18 U.S.C.S. 1151. Where a dispute exists as to the "Indian country" status of land, EPA administers the underground injection control (UIC) program until a final determination can be made. 53 Fed. Reg. 43096, 43097 (Oct. 25, 1988). Accordingly, EPA administers the UIC program for Indian lands in New Mexico, with the exception of those lands under the purview of tribes that have secured TAS status and primacy. 40 C.F.R. 147.1603. [Go To Headnote](#)

Environmental Law : Water Quality : Safe Drinking Water Act : Underground Sources

United States v. King, 660 F.3d 1071, 2011 U.S. App. LEXIS 20020 (9th Cir Oct. 3, 2011), writ of certiorari denied by 132 S. Ct. 2740, 183 L. Ed. 2d 615, 2012 U.S. LEXIS 4482, 80 U.S.L.W. 3678 (U.S. 2012).

Overview: Government was not required to prove, as an element 42 U.S.C.S. § 300h-2(b)(2), that injection of the water would have an adverse impact on an underground source of drinking water. Rather it had only to prove that defendant willfully failed to comply with a requirement of an applicable underground injection program.

- Idaho administers and is the primary enforcer of the Safe Drinking Water Act (SDWA), 42 U.S.C.S. § 300h-2(b)(2) under an underground injection control (UIC) program approved by the federal Environmental Protection Agency. 40 C.F.R. § 147.650. Under Idaho's UIC program, injections of fluids into deep wells require a permit. Idaho defines a drinking water source as an aquifer which contains water having less than the 10,000 mg/ol total dissolved solids, and has not otherwise been exempted by the State's director of the department of water resources. Idaho Code § 42-3902(3); Idaho Admin. Code § 37.03.03, Rule 10.17. 40 C.F.R. § 144.3 (including this definition). A waste disposal and injection well is an injection well which is more than eighteen (18) feet in vertical depth below land surface. Idaho Code § 42-3902(19). No existing waste disposal and injection well can be used unless a permit therefor has been issued by the state director of the department of water resources. Idaho Code § 42-3903. The director may issue a permit only if non-contamination conditions for the permit have been met by the applicant, including whether drinking water sources will be unreasonably affected. Idaho Admin. Code, § 37.03.03, Rule 45.02. [Go To Headnote](#)

Miami-Dade County v. United States EPA, 529 F.3d 1049, 2008 U.S. App. LEXIS 12119 (11th Cir June 6, 2008).

Overview: Contrary to an environmental group's argument, the EPA's final rule addressed non-biological contaminants by requiring underground effluent injection facilities with significant industrial users to implement pretreatments or certify there were no such users consistent with Fla. Admin. Code Ann. R. 62-610.330; the petition for review was denied.

- An underground source of drinking water is an aquifer, or portion thereof, that either (1) supplies any public water system; or (2) contains a sufficient quantity of ground water to supply a public water system and

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currently supplies drinking water for human consumption, or contains fewer than 10,000 mg/l total dissolved solids, and is not an exempted aquifer. [40 C.F.R. § 144.3](#). [Go To Headnote](#)

- The Environmental Protection Agency is charged with protecting the Floridan Aquifer itself because portions of that aquifer are designated as underground sources of drinking water, even though a particular local entity does not currently draw from it. [40 C.F.R. § 144.3](#). [Go To Headnote](#)

Hri, Inc. v. EPA, 198 F.3d 1224, 2000 U.S. App. LEXIS 119 (10th Cir Jan. 6, 2000).

Overview: Respondent EPA did not abuse its discretion deciding certain lands constituted Indian country and other lands were subject to a jurisdictional dispute requiring the direct federal underground injection control program.

- As a general rule, the Safe Drinking Water Act (SDWA) prohibits contamination of an underground source of drinking water, defined broadly at [40 C. F.R. § 144.3](#). Because certain aquifers within that definition will never be used as sources of drinking water, however, United States Environmental Protection Agency (EPA) adopted criteria for exempting certain aquifers from SDWA requirements. [40 C.F.R. § 146.4](#). [Go To Headnote](#)
- Environmental Protection Agency (EPA) regulations define "Indian lands" for the purpose of the Safe Drinking Water Act (SDWA) as "Indian country" as defined in [18 U.S.C.S. 1151](#). [40 C.F.R. § 144.3](#). [Go To Headnote](#)

Legal Envtl. Assistance Found. v. United States EPA, 118 F.3d 1467, 1997 U.S. App. LEXIS 20992 (11th Cir Aug. 7, 1997).

Overview: EPA ' interpretation that it could not hear environmental group ' petition or regulate hydraulic fracturing because it did not constitute underground injection was inconsistent with the Safe Drinking Water Act and regulations promulgated thereunder.

- Regulations define "underground injection" as "well injection," which in turn is defined as the subsurface emplacement of fluids through a bored, drilled, or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. [40 C.F.R. § 144.3](#). [Go To Headnote](#)

Western Nebraska Resources Council v. Environmental Protection Agency, 793 F.2d 194, 1986 U.S. App. LEXIS 25874 (8th Cir June 6, 1986).

Overview: A challenge by the WNRC to EPA approval of the state ' s underground injection control program was dismissed as untimely, and a challenge to EPA approval of an aquifer exemption failed to establish that the EPA action was arbitrary and capricious.

- [40 C.F.R. § 144.3](#) provides: Underground source of drinking water (USDW) means an aquifer or its portion: (a)(1) Which supplies any public water system; or (2) Which contains a sufficient quantity of ground water to supply a public water system; and (i) Currently supplies drinking water for human consumption; or (ii) Contains fewer than 10,000 mg/l total dissolved solids; and (b) Which is not an exempted aquifer. [Go To Headnote](#)

Governments : Native Americans : Authority & Jurisdiction

Hydro Res., Inc. v. United States EPA, 562 F.3d 1249, 2009 U.S. App. LEXIS 8517 (10th Cir Apr. 17, 2009).

Overview: EPA conclusion that "Section 8" land located in northwest New Mexico fell within "dependent Indian communities" pursuant to [18 U.S.C.S. § 1151\(b\)](#), had an adequate basis in law, and thus, the land was "Indian country," and a proposed uranium mine was subject to EPA underground injection control under the Safe Drinking Water Act.

- By statutory default, the U.S. Environmental Protection Agency typically has primary enforcement responsibilities for lands that fall within [40 C.F.R. § 144.3](#) ' s definition of "Indian lands" until a tribe has secured "Treatment as a State" (TAS) status and primacy over its lands. That regulation, [40 C.F.R. § 144.3](#), states that "Indian lands" means Indian country as defined in [18 U.S.C.S. 1151](#). Where a dispute exists as

to the "Indian country" status of land, EPA administers the underground injection control (UIC) program until a final determination can be made. 53 Fed. Reg. 43096, 43097 (Oct. 25, 1988). Accordingly, EPA administers the UIC program for Indian lands in New Mexico, with the exception of those lands under the purview of tribes that have secured TAS status and primacy. 40 C.F.R. 147.1603. [Go To Headnote](#)

Governments : Native Americans : Property Rights

Hri, Inc. v. EPA, 198 F.3d 1224, 2000 U.S. App. LEXIS 119 (10th Cir Jan. 6, 2000).

Overview: Respondent EPA did not abuse its discretion deciding certain lands constituted Indian country and other lands were subject to a jurisdictional dispute requiring the direct federal underground injection control program.

- Environmental Protection Agency (EPA) regulations define "Indian lands" for the purpose of the Safe Drinking Water Act (SDWA) as "Indian country" as defined in 18 U.S.C.S. 1151, 40 C.F.R. § 144.3. [Go To Headnote](#)

Governments : State & Territorial Governments : Property

Hri, Inc. v. EPA, 198 F.3d 1224, 2000 U.S. App. LEXIS 119 (10th Cir Jan. 6, 2000).

Overview: Respondent EPA did not abuse its discretion deciding certain lands constituted Indian country and other lands were subject to a jurisdictional dispute requiring the direct federal underground injection control program.

- Environmental Protection Agency (EPA) regulations define "Indian lands" for the purpose of the Safe Drinking Water Act (SDWA) as "Indian country" as defined in 18 U.S.C.S. 1151, 40 C.F.R. § 144.3. [Go To Headnote](#)

Research References & Practice Aids

NOTES APPLICABLE TO ENTIRE PART:

[PUBLISHER 'SNOTE: For Federal Register citations concerning Part 144 Notice of Final Decisions, see: 67 FR 38403, June 4, 2002.]

[PUBLISHER 'SNOTE: For Federal Register citations concerning Part 144 Establishment of Class VI Program, see: 76 FR 56982, Sept. 15, 2011.]

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